

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 141 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHREEJI ENGINEERING WORKS

Versus

SHRINATH STEEL LIMITED

Appearance:

1. COMPANY PETITION No. 141 of 1997
MR MUKESH A PATEL for Petitioner No. 1
MR KG SHETH for Respondent No. 1
MR HS MUNSHAW for Respondent No. 1
OFFICIAL LIQUIDATOR for Respondent No. 1
-

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 06/04/2005

ORAL JUDGEMENT

#. The petitioner has filed this petition under Sections 433(e), 434 and 439 of the Companies Act 1956, for winding up of the respondent Company, on the ground that the respondent - Company has failed and neglected to pay the dues of the petitioner.

#. It is the case of the petitioner that the respondent - Company for the purpose of maintenance and repairing work of the factory premises, had issued the job work to the petitioner and the petitioner had issued the respective bills for work done during the period from 1996 to January 1997 for an amount of Rs.96,690/-. It is further stated that as per the agreed terms and conditions, the payment of said bills was to be made by the respondent - Company to the petitioner within a period from one week from the receipt of the bills and bills have been duly received by the respondent - Company from the petitioner. It is further stated that despite repeated requests no payment was made by the respondent-Company and hence statutory notice was issued by the petitioner to the respondent Company which was duly received and the dues were admitted by the respondent Company vide its letter dated 4.2.1997. It is also stated in the said reply that the respondent Company was indebted to many creditors and financial position of the Company was not good. It is further stated by the petitioner that the respondent Company was having creditors of about Rs.4 Crores including the creditors like GSFC, State Bank of India and other suppliers and depositors. As against this, the assets of the respondent- Company were not exceeding to the amount of Rs.2 Crores and only with a view to defraud the other creditors, the respondent - Company and its Managing Director were privately making the payments to their relatives who have deposited the amount or who were creditors of the respondent - Company. It is further stated that the resultant effect of all such payments would be that all the creditors of the respondent Company have not got the payment and they would not get even the proportionate amounts which may be payable at the time of proportionate distribution and the creditors who were favourites of the respondent -Company were paid 100% of their dues. It is in this background of the matter, the present petition was filed by the petitioner seeking the winding up of the respondent- Company.

#. During the pendency of this petition before this Court, the Company Application No.374/1997 was filed by Navyug Alloys Pvt. Ltd. and this Court has passed an order on 3.12.1998, wherein this Court has observed that it was very necessary to file specific reply with respect

to various contentions raised in para-5 of the petition by the respondent No.1 as also GSFC if necessary. The Court has also made reference to the Application No.374/1997 which was filed seeking direction to the Central Government to conduct investigation of the affairs of the respondent Company. The Court has further observed that the factory premises were under the attachment of GSFC and that serious allegations were made against the Director and Joint Director of the Company. The statement and balance sheet showed that within a span of about 150 days from the inception of the activities of the Company, the Company came to a grinding halt and an amount of loan of about Rs.2.68 Crores given by GSFC and State Bank of India has been siphoned out.

#. This Court has passed further order on 24.4.2001, wherein it is observed that pursuant to the order passed by this Court on 3.12.1998 one Mr.C.M.Katara, Manager (Legal Recovery), Gujarat State Financial Corporation, Ahmedabad has filed an affidavit in reply dated 12.4.2001 in Company Application No.521/1997. However, inspite of the aforesaid order passed by this Court, the Company has still not filed affidavit in reply in the Company petition. The Court has, therefore, granted last chance and directed the Company to file affidavit in reply.

#. The Court, thereafter, passed an order on 26.10.2004 while disposing of the Company Application No.374/1997. The Court has observed that Shri Mahesh P. Shah, the Managing Director of respondent No.1- Company was present in the Court and under his instructions Mr.Sheth learned advocate appearing for the respondent - Company made the statement that the respondent- Company has no objection if necessary directions were issued under Section 237 of the Companies Act, 1957. The Court has further observed that Section 237 of the Act pertains to investigation of Company's affairs in other cases viz. a case which is not covered by Section 235 of the Act. Under Section 237 (a)(ii) of the Act, if the Court declares that the affairs of the Company ought to be investigated by an Inspector appointed by the Central Government, the Central Government is required to appoint one or more competent persons as Inspectors to investigate the affairs of a Company and to report thereon. The Court has further observed that though all the parties have placed various pleadings and made their respective submissions on merits of the case, in light of the concession made on behalf of respondent No.1 - Company, it was not necessary to enter into any discussion on merits of the matter. The Court therefore directed the respondent No.5 under Section 237 (a)(ii) of the Act to

appoint Inspector /Inspectors to investigate the affairs of respondent No.1 - Company and tender report to this Court within a period of eight weeks from the date of receipt of the certified copy of the said order or writ of the Court, whichever was earlier. The Court has also directed to place report on the record of Company Petition No.141/1997. The Official Liquidator attached to this Court was directed to furnish complete set of the pleadings and documents of Company Application No.374/1997 and Company Application No.521/1997 to the Inspector / Inspectors so appointed by the Central Government for the purpose of enabling them to carry out their duties. The Court has disposed of both the said applications on the above lines.

#. Pursuant to the order passed by this Court, the Central Government has appointed Shri Dhan Raj, Joint Director (Inspection) of the Office of Regional Director (Western Region) Mumbai, as Inspector to investigate into the affairs of the Company and advised him to complete the investigation and submit his report to this Court within the period specified by this Court. The Inspector was further advised to commence investigation immediately, for timely compliance with intimation to Central Government. Though the time granted by this Court expired much earlier, the report has not come on record of this Court and hence the Court passed an order on 2.2.2005 directing the Official Liquidator to immediately report to this Court as to whether directions issued by this Court were complied with and it was further directed to pursue the matter with the Inspector for timely compliance of the order and further directed to convey the Inspector to complete the investigation and place the report before this Court.

#. Pursuant to the aforesaid order, the Inspector has submitted his report dated 14.3.2005 and the said report has been placed on record of this Court by the Official Liquidator. The Inspector has observed in his report that as per the record available with the Office of the Registrar of Companies, Ahmedabad, the registered office of the Company is situated at 1st floor, Anupam Building, Nava Bazar, Baroda, but the letter sent at the said address was received back undelivered. Moreover, during the course of investigation, the said premises was visited and it was found that no office of the Company was being maintained on the said premises. This shows that the Company is not complying with the provisions of Section 146 of the Companies Act, 1956. It is further observed in the report that while the factory premises at Village Khursalia Taluka Godhra, Dist. Panchmahal

(Gujarat) was visited and it was found that Gujarat State Financial Corporation (GSFC) has taken over the possession of the factory premises of the Company under the provisions of Section 29 of the State Financial Act on 10.4.1997 and has placed its seal on the premises of the Company. In this regard, GSFC has given panchnama for taking over the possession of the premises of the Company. It is further observed that the Company has taken loan of Rs.1,20,000,00/- from GSFC and said loan could not be repaid on time and as on 31.12.2004, the outstanding loan with interest has crossed the quantum of Rs.4 Crores. It is further observed that there has been search and seizure operation by Central Bureau of Investigation (CBI) at the residential addresses of the directors. It is further observed in the report that in addition to the aforesaid loan, there were outstanding dues of secured creditors and litigations were pending with Income Tax Department. The plant and machinery in the premises of the factory has gone out of order and most of the machines were junked. The Inspector, therefore observed that there seems to be no chance of starting operations in the Company. As such, it is a fit case for ordering winding up of the Company under the provisions of Section 433 read with Section 439 of the Companies Act, 1956.

#. It is further observed in the report that the Company has filed balance sheet upto the financial year ending 31.3.1996 and corresponding annual return as on 30.12.1996 with Registrar of Companies, Ahmedabad. No balance sheet and annual return for subsequent years has since been filed and therefore, the Company has been continuously violating the provisions of Section 159 for non filing of annual return and Section 220(3) of the Act or non filing of balance sheets. Not only this, the Company has also violated the provisions of Section 210 by not adopting the balance sheets in the share holder's meetings within six months from the date of closing of the accounts. It is further observed in the process of investigation that no meetings of Shareholders and Board of Directors were taken place. Consequently, it is quite clear that the provisions of Section 166 for non holding of AGM and Section 285 for non holding of meetings of the Board of Directors have been contravened. The Company has failed to file balance sheets for more than 3 years continuously. In view of this, the provisions of Section 274(1)(g) of the Act were also being violated. It is further observed that the minutes for meetings held, upto the Calendar year 1997 were being kept loosely. In fact, the Company should have kept the minutes in the book duly bound and the pages should have been consecutively

numbered. As the same was not done, the provisions of Section 193 of the Act were also violated. The Inspector, therefore, came to the conclusion that the books of accounts and other records etc. of the Company were not available either at the so called registered office of the Company or the factory premises. Therefore, Shri Mahesh P. Shah, M.D. of the Company produced the available records at his residence situated at Station Road, Near Banker Colony, Kalol, Panchmahal, Gujarat. In the process of investigation, a statement in regard to the latest position in the matter of M/s. Shrinath Steel Ltd. was obtained on 16.2.2005. It is stated by him that GSFC has attached the mortgaged property and taken possession of the property on 10.4.1997 and since then, the plant of the Company is under the sole custody and security of GSFC. In the process of investigation, necessary enquiry was made from the security staff and Official of GSFC and it was learnt that security has been deployed by GSFC and it was confirmed that factory premises are under sole custody of GSFC only.

#. It is further observed that the Company has also obtained working capital facilities against the stocks / book debts of Rs.150.13 lacs from State Bank of India, Baroda and the said bank has filed Recovery Suit in Debt Recovery Tribunal, Ahmedabad under Company Application No.319/1997.

##. With regard to the payment to some deposit holders and sundry creditors, the Inspector has made necessary inquiry and it is observed that the entire plant is under the sole custody of GSFC and therefore, no assets could be sold / disposed off by the directors of the Company. However, the Company has not finalised its balance sheets subsequent to 31.3.1996 and therefore the disposal of assets, or changes therein can not be commented perfectly by the Inspector and he has relied on the statement given by Managing Director on 16.2.2005, wherein he has stated that the Company has no access to the factory. There was another concern of the sole proprietorship under the name of M/s. Darshan Printing Press situated at Station Road, Kalol (PMS). To avoid personal threatening and any threat to their business reputation, the Directors have made certain payment to the depositors out of their personal income and income of sole proprietorship. In all payment to the tune of Rs.21,92,0000/- were made. Cash credit account with State Bank of India has not been operating since April 1997 due to closer of business and hence the said account was converted into Non Performing Assets Account.

##. From all these facts, the Inspector has observed that no assets of the Company were disposed of. However, due to practical problems / difficulties and commercial compulsions in the business of printing carried on by the Managing Director under the name of M/s. Darshan Printing Press, some payments were made to depositors and creditors out of their personal accounts and against adjustment of bills raised by the parties in regard to the work of printing. So far as the accounts of the Company operated with State Bank of India and Bank of Baroda are concerned, it is stated that the said accounts are having nominal amounts of balances and the same are lying in operative or dead since 1997. The Inspector has confirmed that no money was given by the Company or deposited in the the Bank Accounts by way of sale of assets or otherwise and no payment has been made to deposit holders / creditors out of the funds of the Company.

##. Based on the aforesaid report of the Inspector Mr.K.G.Sheth learned advocate appearing for the respondent Company has submitted that since the respondent Company closed in 1997 and no business is carried out, the winding up order may be passed. Mr.Mukesh Patel learned advocate appearing for the petitioner on the other hand submitted that winding up order is not the appropriate remedy in the present case and still further inquiry and investigation is required in the matter. He has submitted that the petition is pending since 1997. The possession was already taken by GSFC in 1997 and still the proceedings are pending before this Court. Under the guise of an inquiry which was sought to be demanded by the applicant in Company Application No.374/1997, the very fact that the respondent Company has agreed to the said inquiry and now the respondent Company has also agreed to get the winding up order passed itself suggests that by putting the end to this proceeding the Directors of the Company want to get relieved from their liability. He has further submitted that even the Inspector has also not taken proper care in submitting his report and it appears that the report has been prepared only with a view to favour the Ex-director of the Company. The Court, therefore, should take very serious view of the matter and pass the order for further inquiry in the matter.

##. After having heard the learned advocate appearing for the respective parties and after having gone through the facts and circumstances of the case and also the report of the Inspector, this Court is of the view that

it is foregone conclusion that the winding up of the respondent Company is unavoidable as Company is closed since 1997 and possession of the Company's properties has already been taken by the GSFC. It is rather strange and shocking that the statement of the Managing Director was accepted by the Inspector to the effect that the payment shall be made out of his own personal sources and income of his sole proprietorship firm to the extent of more than Rs.21,92,000/-. As against this, the dues of GSFC and State Bank of India are still outstanding and proceedings are going on. The Court has observed in its order of 1998 that within 150 days from the inspection of its activities, the Company came to a grinding halt and an amount of about Rs.2.68 Crores loan by GSFC and State Bank of India has been siphoned out. The Bank and financial institutions have also not taken any proper care in the matter to safeguard their interest. This requires a very stringent action against the Ex-director of the Company and appropriate criminal proceedings are also required to be lodged against them. The Inspector has enumerated several provisions of the Companies Act, which have been breached by the Ex-director of the Company. It is very unfortunate that despite these facts the Registrar of Company has not launched any action against the Company and its Directors.

##. Though the scope of the present petition is very limited, however, on the basis of facts which have come to the forefront in the form of the report of the Inspector, the Court while passing the winding up order directs the Official Liquidator to call for the relevant details from the Ex-directors of the Company as to how and in what manner and from what sources the payments were made to the persons referred to in the Inspector's report. The Official Liquidator is further directed to insist for immediate filing of the Statement of Affairs within a stipulated period from the Ex-directors of the Company. Since the possession of the factory premises is already with GSFC there is no question of taking the said possession. However, if any other property is available, the Official Liquidator is directed to take the possession thereof immediately. The Official Liquidator is further directed to call for the inventory report from GSFC with regard to the assets lying in the factory premises. The Official Liquidator is further directed to issue notices to the parties which are referred to in the Inspector's report calling upon them to furnish the details regarding payment received by them and if it is found that the said payments were made to them out of the funds of the company, ask them repay the amount, as the said amount was paid to them after the winding up

petition is filed before this Court and it would amount to preferential payment which is contrary to the provisions of Companies Act, 1956. The Official Liquidator is further directed to file his compliance report with regard to the directions issued in the present order within one month from the date of receipt of certified copy of this order or within period of one month from the date of receipt of writ from this Court whichever ever is earlier.

##. With the aforesaid observations and directions this petition is accordingly disposed of.

(K. A. PUJ, J.)

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